

BOARD OF APPEALS CASE NO. 4945

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BEFORE THE

APPLICANT: Kenny Kaye

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ZONING HEARING EXAMINER

REQUEST: Amendment to Case No. 1891
to allow fencing for a kennel with less
than the required 400 foot setback;
2222 Kalmia Road, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/14/99 & 7/21/99

HEARING DATE: September 8, 1999

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Record: 7/16/99 & 7/23/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Kenny Kaye, appeared before the Hearing Examiner requesting an amendment to Board of Appeals Case No. 189, to allow fencing for an existing kennel to be closer than 400 feet from the property line.

The subject parcel is located 2222 Kalmia Road in the Third Election District. The parcel is identified as Parcel No. 73, in Grid 1-E, on Tax Map 34. The parcel contains 23.076 acres, all of which is zoned Agricultural.

Mr. Kenny Kaye appeared and testified that he purchased the subject property in May, 1999, which contained an existing kennel. Mr. Kaye said that he would like to fence an area 100 feet by 150 feet with a 6-foot high fence to create an exercise area for the dogs. Mr. Kaye said that once the kennel is complete, the nearest house will be approximately 500 feet away, with 250 feet of woodland between the fenced area and the nearest dwelling.

Mr. Anthony S. McClune, Manager, Division of Land Use Management for the Department of Planning & Zoning, appeared and testified that in 1973, in Board of Appeals Case No. 1891, a conditional use for a kennel facility for 30 dogs was approved. Mr. McClune said that the structures were so located that the use would be approximately 400 feet from the property line even though the law in effect at the time required a 200 foot setback from any residential lot, any lot occupied by a dwelling or by a school, church, or any institution for human care.

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Mr. McClune said that the Staff has reviewed the Applicant's request to create a fenced exercise area in a clearing to the right side of the kennel. Mr. McClune said that the exercise area will be at least 500 feet from the nearest dwelling and will be buffered by approximately 300 feet of dense woodland. He went on to testify that the setback will exceed the 200 foot setback required by the present Zoning Code. Mr. McClune said the fenced area will limit the potential for the dogs escaping and that the present business has operated successfully and been a compatible neighbor to the community for over 25 years without incident. He said the modification request, if approved, does not increase the number of dogs nor does it relocate the kennel and, therefore, should not have an adverse impact on surrounding properties. Mr. McClune said that the Staff recommended approval of the Applicant's request.

Mr. Lama Montue, 918 Rock Spring Road, appeared and testified that his mother owns property which adjoins the subject property and he expressed concern about the Applicant's request.

CONCLUSION:

The Applicant is requesting an amendment to Board of Appeals Case No. 1891, which was decided in 1973. In that case, the Applicant's predecessor in title was required to maintain a 400 foot setback from his property line for the dog kennel.

The Applicant is now requesting an amendment to construct a fenced exercise area with dimensions of 100 feet by 150 feet. The present Zoning Code requires a 200 foot setback from all properties lines, which the Applicant can comply with. The testimony of the Applicant and Mr. McClune indicates that the nearest dwelling to the proposed fenced exercise area is approximately 500 feet away, and 250-300 feet of that area is densely wooded.

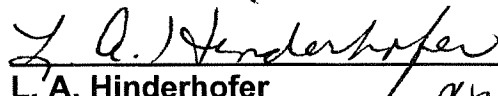
It is the finding of the Hearing Examiner that practical difficulty would occur if the requested variance to amend Case No. 1891 is denied. The uncontradicted evidence indicates that the dog kennel has operated on the subject parcel for approximately 25 years without complaint. It is, also, interesting to note that the present Zoning Code only requires a 200 foot setback and the Applicant's exercise yard will be 285 feet from the property line and 500 feet from the nearest dwelling.

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It is the recommendation of the Hearing Examiner that the requested amendment to reduce the required setback from 400 feet to 285 feet be approved, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the fencing.
2. That all other conditions as set forth in Board of Appeals Case No. 1891 not herein specifically modified shall remain in force and effect.

Date OCTOBER 21, 1999



L. A. Hinderhofer *ab*
Zoning Hearing Examiner